

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Tariff Filing Requirements for) CC Docket No. 93-36
Nondominant Common Carriers)
)

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**OPPOSITION OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES
TO PETITIONS FOR RECONSIDERATION**

Pursuant to Section 1.429(f) of the Commission's rules, the Association for Local Telecommunications Services ("ALTS") hereby opposes the petitions for reconsideration filed by Bell Atlantic and Southwestern Bell ("SBC Communications Inc.") concerning the Commission's decision released September 27, 1995, in the above proceeding ("Order On Remand").

**I. THE COMMISSION DID NOT ERR IN FOCUSING ITS ORDER ON REMAND
UPON THE ONLY ISSUE ADDRESSED BY THE COURT OF APPEALS.**

On January 30, 1995, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in Southwestern Bell v. FCC, 43 F.3d 1515 (D.C. Cir. 1995). The Court vacated the Commission's Nondominant Filing Order, 8 FCC Rcd 6752 (1993), based on its conclusion that the range of rates permitted in that opinion for nondominant carriers violated Section 203(a) of the Communications Act of 1934.

On September 27, 1995, the Commission issued its Order on Remand in which it complied with the Court's remand by deleting

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the range of rates provision from its rules, and reinstating the other portions of its Nondominant Filing Order (at ¶ 2).

SBC Communications Inc. ("SBC") and Bell Atlantic have now filed petitions for reconsideration of the Order on Remand. Neither Bell Atlantic nor SBC dispute the Commission's conclusion that the Court's decision addressed only the range of rates issue, nor do they quarrel with the Commission's deletion of the range of rates provision from its Nondominant Filing Order. Instead, they contend the Commission should have also addressed other issues which the Court expressly refrained from reaching.

In the case of Bell Atlantic, it wants the Commission to interpret Section 211(a) of the Act to require nondominant carriers to file contracts with other carriers. SBC, on the other hand, requests that the Commission abandon its entire dominant/nondominant distinction in the context of its streamlined tariff filing requirements.

Putting aside for present purposes the issue of whether either of these contentions might have merit, it is manifest the Commission was fully entitled in its Order On Remand to address only the issues resolved by the Court. Indeed, the Court expressly recognized that SBC's claim in particular was distinct from the issue of the range of rates (id. at 1525, n. 6):

"Our opinion in this case disposes of Southwestern Bell Corporations's ('Southwestern') claim that the FCC should reconsider the dominant/nondominant carrier distinction, because its claim presently hinges on the misperception that the FCC has statutory authority to adopt the Range Tariff Order. Any subsequent agency rules that attempt to apply this dominant/nondominant distinction may give rise to Southwestern's claim and may provide a more appropriate context in which to consider it."

Coming from the Court of Appeals for the District of Columbia Circuit, a forum well versed in crafting appellate mandates to agencies, this language plainly does not require Commission to piggyback either SBC or Bell Atlantic's present concerns into its Order on Remand.

Sound procedure also underscores the Commission's wisdom in focusing its Order on Remand solely upon the range of rates issues implicated in the Court's decision. The Commission does not presently have a record which fully addresses these matters, as implicitly recognized in the above quotation from Southwestern Bell. Taking additional comments in order to resolve these contentions in addition to the Commission's obligation on remand would have simply bogged the Commission down in a proceeding where several parties have long complained about procedural timeliness.

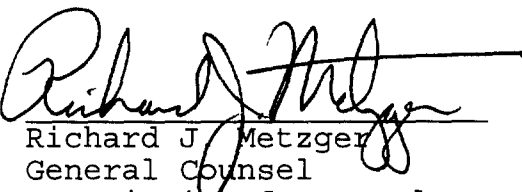
SBC and Bell Atlantic remain fully entitled to raise their concerns either in petitions for rulemaking, or in the Second Further NPRM in 94-1, in which related matters are already being addressed by the Commission. However, the Commission clearly was under no substantive or procedural obligation to address these

particular concerns in its Order on Remand.

CONCLUSION

For the foregoing reasons, ALTS opposes the petitions for reconsideration filed by SBC and Bell Atlantic.

Respectfully submitted,

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January 16, 1996

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of the Association for Local Telecommunications Services was served January 16, 1996, on the following persons by first-class mail or hand service, as indicated.


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